

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION, STATE OF CONNECTICUT,)	
STATE OF MARYLAND, STATE OF)	
NEW JERSEY, and STATE OF NEW YORK,)	
)	
Plaintiffs,)	
)	
v.)	02: 05cv885
)	
ALLEGHENY ENERGY, INC.,)	
ALLEGHENY ENERGY SERVICE)	
CORPORATION, ALLEGHENY ENERGY)	
SUPPLY COMPANY, LLC;)	
MONONGAHELA POWER COMPANY,)	
THE POTOMAC EDISON COMPANY, and)	
WEST PENN POWER COMPANY,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Presently before the Court for disposition is the PLAINTIFFS' NOTICE OF APPEAL OF THE MAGISTRATE JUDGE'S DECISION GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO EXTEND LIABILITY DISCOVERY AND SET AN EXPERT DISCOVERY SCHEDULE (Document No. 86), PLAINTIFFS' OBJECTIONS TO THE MAGISTRATE JUDGE'S DECISION GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO EXTEND LIABILITY DISCOVERY AND SET AN EXPERT DISCOVERY SCHEDULE (Document No. 87), the response in opposition filed by Defendants (Document No. 100), and the Reply Brief of Plaintiffs (Document No. 103).

By Order of June 27, 2007, Magistrate Judge Robert C. Mitchell extended liability discovery in this matter by five months, instead of the ten months as requested by Plaintiffs (Plaintiffs had requested five additional months to conduct fact discovery to be followed by five additional months of expert discovery). The Scheduling Order extended the deadline for liability discovery, which includes both fact and expert discovery, until December 31, 2007, for a total of seventeen (17) months of liability discovery.

Plaintiffs timely filed their objections to the June 27, 2007 Scheduling Order. Plaintiffs contend that the decision of the magistrate judge is clearly erroneous because (i) it does not provide for enough time to complete expert discovery; and (ii) the current scheduling order provides less time for liability discovery than other Clear Air Act new source review enforcement actions.

The Court finds that both these arguments are without merit and will dismiss Plaintiffs' appeal of the June 27, 2007 Scheduling Order.

Standard of Review

The Federal Magistrates Act provides two separate standards for judicial review of a magistrate judge's decision: (i) "de novo" for magistrate resolution of dispositive matters, *see* 28 U.S.C. § 636(b)(1)(B)-(C), and (2) and (ii) "clearly erroneous or contrary to law" for magistrate resolution of nondispositive matters. *See* 28 U.S.C. § 636(b)(1)(A); *accord* Fed. R. Civ. P. 72(a), (b); Local Civil Rule 72.1.3; *see also Cipollone v. Liggett Group, Inc.*, 875 F.2d 1108, 1113 (3d Cir. 1986) *cert. denied*, 484 U.S. 976 (1987). A magistrate judge's decision to

deny a request for an extension of discovery is a nondispositive matter that must be reviewed by the district court under a clearly erroneous standard.

A finding is “clearly erroneous” when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985); *Republic of Philippines v. Westinghouse Elec. Corp.*, 132 F.R.D. 384, 387 (D.N.J.1990) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Under this standard, a reviewing court will not reverse the magistrate judge’s determination even if the court might have decided the matter differently. *Toth v. Alice Pearl, Inc.*, 158 F.R.D. 47, 50 (D.N.J. 1994).

“Where a magistrate judge is authorized to exercise his or her discretion, the decision will be reversed only for an abuse of that discretion.” *Cooper Hosp./Univ. Med. Ctr. v. Sullivan*, 183 F.R.D. 119, 127 (D.N.J. 1998). The deferential standard is particularly appropriate in the case where the magistrate judge has managed the case from the outset and developed a thorough knowledge of the proceedings. *Id.* at 127.

In this case, because there is no issue of law in the dispute, this Court will review the decision of Magistrate Judge Mitchell under an abuse of discretion standard.

Discussion

Plaintiffs argue that Magistrate Judge Mitchell erred when he denied their request for a ten-month extension in which to complete discovery. However, the Court finds that the decision of Magistrate Judge Mitchell to extend discovery for five (5) months, rather than ten

(10) months as requested by Plaintiffs, was well within the bounds of his discretion in managing the discovery in this case. Accordingly, the Court finds and rules that Magistrate Judge Mitchell's determination to extend discovery for five (5) months, rather the (10) months as requested by Plaintiffs, was neither "clearly erroneous or contrary to law."

Conclusion

For the hereinabove reasons, the Court will affirm the June 27, 2007 Scheduling Order issued by Magistrate Judge Mitchell. An appropriate order follows.

McVerry, J.

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WEST PENN POWER COMPANY,)

Defendants.)

ORDER OF COURT

AND NOW, this 3rd day of August, 2007, it is hereby ORDERED, ADJUDGED
AND DECREED that the Notice of Appeal filed by Plaintiffs is **DISMISSED** and the
Objections to the Magistrate Judge's Decision filed by Plaintiffs are **DENIED**.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: Magistrate Judge Robert C. Mitchell

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